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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,667	09/30/2003	Francis M. Creighton IV	5236-000440	5015
28997 7590 06/02/2009 HARNESS, DICKEY, & PIERCE, P.L.C 7700 Bonhomme, Suite 400 ST. LOUIS, MO 63105				
EXAMINER				
RAMIREZ, JOHN FERNANDO				
ART UNIT		PAPER NUMBER		
3737				
MAIL DATE		DELIVERY MODE		
06/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/674,667

**Applicant(s)**

CREIGHTON ET AL.

**Examiner**

JOHN F. RAMIREZ

**Art Unit**

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02/16/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39-41, 45-47, 51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-41, 45-47, 51 and 52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

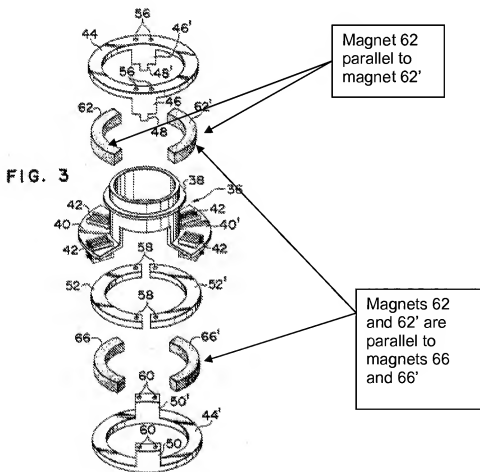
## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed on 02/16/09 have been fully considered but they are not persuasive.

In response to applicant's argument that the Kioke reference does not disclose segments arranged in a parallel manner (see page 5 of the remarks). The examiner of record disagrees with applicant's comments for the following reasons:

First of all, Kioke's magnets (62, 62', 66, 66') are parallel to each other as shown in figs. 3 and 4.



Second, it appears in the present invention that the plurality of segments (FIG. 13 elements 500a-f; FIG. 10 elements b-i) are not parallel to respect to each other, since their boundary lines don't have the same distance apart (called "equidistant") as shown in figs. 10, 13 and 18 of the present application SN 10/674667.

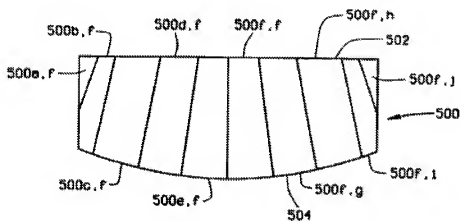


FIG. 13

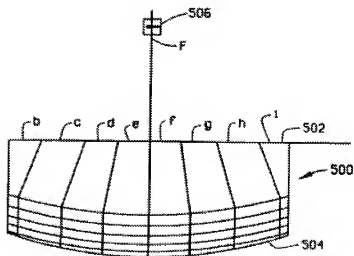


FIG. 10

And last, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., to be arranged in a parallel manner) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the Kioke does not teach forming a magnet assembly that contributes to a magnetic field at an operating point spaced from the magnet assembly. The examiner disagrees with applicant's assertions. As argued before, in col. 2, lines 29-55 of the Kioke's specifications, it expressly states:

ically controlled diaphragm. More specifically, the  
40 present invention provides an electromagnetic rotary  
motion device which generally comprises stationary  
magnetic flux generating means formed with at least  
one arcuately curved continuous air gap concentric  
with the cylindrical structure and establishing a sub-  
45 stantially uniform magnetic field flowing in a direction  
parallel to an axis of the cylindrical structure through  
the air gap, armature means concentric with the flux  
generating means and rotatable along the air gap about  
the axis of the cylindrical structure through an angle  
50 substantially proportional to a d.c. current applied to  
the armature means, and means interconnecting the  
armature means and the cylindrical structure for trans-  
mitting the rotation of the armature means to the cylin-  
55 drical structure.

Based on the above evidence, the rejections still read on the claims and are maintained.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

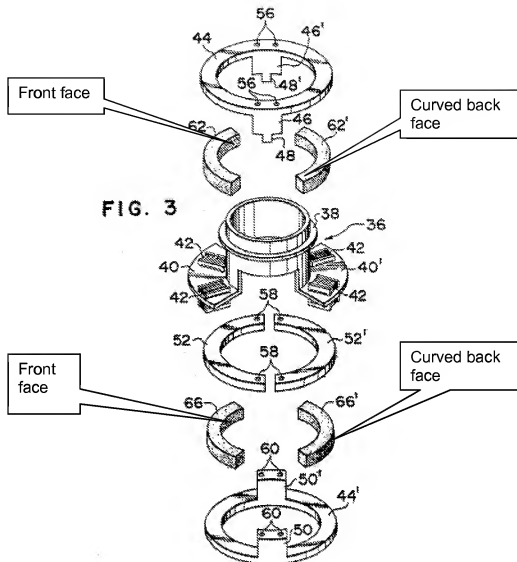
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims 39-41, 45-47 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Koike et al (US 3,971,963).**

Koike et al. disclose a method of making a magnet assembly comprising:  
providing a plurality of segments (e.g. 62, 62', 66, 66') of permanent magnet material

configured, or when, to be arranged in parallel manner to form a magnet assembly; forming a radius of curvature on a top face (outer diameter surface of each of segments 62, 62', 66, 66') of each of the segments, such that the segments when assembled form a generally curved top surface having a radius of curvature that corresponds to a distance between the top face and an intended pivot axis (centerline of assembly in Fig. 4) of the assembled magnet; forming a curved back face (inner diameter surface of each of segments 62, 62', 66, 66') of each of the segments, such that the segments when assembled form a shape in accordance with at least one selected surface of constant contribution to the predetermined operating point, such that the segments of permanent magnet material will each contribute to the magnetic field generated at the predetermined operating point spaced from the center of the assembled magnet (col. 2, lines 39-55); and assembling the segments to form the magnet assembly (see Fig. 3). Koike et al. disclose and illustrate in Figures 3 and 4 that the magnet comprises a front face generally facing the operating point, and an at least approximately curved back face facing away from the operating point, the back face generally conforming to a constant contribution surface of the magnetic field in the selected direction (col. 2, lines 39-55; col. 5, lines 28-63).



**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not



mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN F. RAMIREZ whose telephone number is (571)272-8685. The examiner can normally be reached on (Mon-Fri) 7:00 - 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/BRIAN CASLER/  
Supervisory Patent Examiner, Art Unit 3737